

(b) *Recipient agency records.* Each recipient agency shall maintain accurate and complete records with respect to the receipt, disposal, and inventory of donated food, including products processed from donated food, and with respect to any funds which arise from the operation of the distribution program.

(c) *Refunds.* A recipient agency purchasing end products under the NCP Program from a processor utilizing a refund system shall submit a refund application supplied by the processor to the processor within 30 days of receipt of the end products, except that recipient agencies may submit refund applications to a single processor on a Federal fiscal quarterly basis if the total anticipated refund due for all purchases of end product from that processor during the quarter is 25 dollars or less. Recipient agencies must insure that any funds received as a result of refund payments be designated for use by the food service department.

(d) *Verification.* If requested by FNS, each recipient agency shall cooperate in the verification of end product sales reported by processors under the NCP Program. The recipient agency may be requested to verify actual purchases of end products as substantiated by the recipient agency's invoices and may also be requested to verify that the invoice correctly identifies the discount included or refund due for the value of the donated ingredient contained in the end product.

[51 FR 23518, June 30, 1986, as amended at 59 FR 62987, Dec. 7, 1994]

§ 252.6 Miscellaneous provisions.

(a) *Improper distribution or loss of or damage to donated food.* If a processor improperly distributes or uses any donated food, or causes loss of or damage to a donated food through its failure to provide proper storage, care, or handling, FNS shall require the processor to pay to the Department the value of the donated food as determined by the Department.

(b) *Disposition of damaged or out-of-condition food.* Donated food which is found to be damaged or out-of-condition and is declared unfit for human consumption by Federal, State, or local health officials, or by any other inspection services or persons deemed

competent by the Department, shall be disposed of in accordance with instructions of the Department. This instruction shall direct that unfit donated food be sold in a manner prescribed by the Department with the net proceeds thereof remitted to the Department. Upon a finding by the Department that donated food is unfit for human consumption at the time of delivery to a recipient agency and when the Department or appropriate health officials require that such donated food be destroyed, the processor shall pay for any expenses incurred in connection with such donated food as determined by the Department. The Department may, in any event, repossess damaged or out-of-condition donated food.

(c) *FNS sales verification.* FNS may conduct a verification of processor reported sales utilizing a statistically valid sampling technique. If, as a result of this verification, FNS determines that the value of the donated food has not been passed on to recipient agencies or if end products have been improperly distributed, FNS may assert a claim against the processor. This claim may include a projection of the verification sample to the total NCP sales reported by the processor.

(d) *Sanctions.* Any processor or recipient agency which has failed to comply with the provisions of this part or any instructions or procedures issued in connection herewith, or any agreements entered into pursuant hereto, may, at the discretion of the Department, be disqualified from further participation in the NCP Program. Reinstatement may be made at the option of the Department. Disqualification shall not prevent the Department from taking other action through other available means when considered necessary, including prosecution under applicable Federal statutes.

(e) *Embezzlement, misuse, theft, or obtainment by fraud of commodities and commodity related funds, assets, or property in child nutrition programs.* Whoever embezzles, willfully misapplies, steals, or obtains by fraud commodities donated for use in the NCP Program, or any funds, assets, or property deriving from such donations, or whoever receives, conceals, or retains such commodities, funds, assets, or property for

his own use or gain, knowing such commodities, funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud, shall be subject to Federal criminal prosecution under section 12(g) of the National School Lunch Act, as amended, or section 4(c) of the Agriculture and Consumer Protection Act of 1973, as amended. For the purpose of this paragraph “funds, assets, or property” include, but are not limited to, commodities which have been processed into different end products as provided for by this part, and the containers in which commodities have been received from the Department.

§ 252.7 OMB control number.

The information collection and reporting requirements contained in this part have been approved by the Office of Management and Budget under control number 0584–0325.

PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS

Sec.

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AUTHORITY: 91 Stat. 958 (7 U.S.C. 2011–2027), unless otherwise noted.

SOURCE: 44 FR 35928, June 19, 1979, unless otherwise noted. Redesignated by Amdt. 1, 47 FR 14137, Apr. 2, 1982.

§ 253.1 General purpose and scope.

This part describes the terms and conditions under which: commodities (available under part 250 of this chapter) may be distributed to households on or near all or any part of any Indian reservation, the program may be administered by capable Indian tribal organizations, and funds may be obtained from the Department for the costs incurred in administering the program.

This part also provides for the concurrent operation of the Food Distribution Program and the Food Stamp Program on Indian reservations when such concurrent operation is requested by an ITO.

§ 253.2 Definitions.

(a) *Exercises governmental jurisdiction* means the active exercise of the legislative, executive or judicial powers of government by an Indian tribal organization.

(b) *Food distribution program* means a food distribution program for households on Indian reservations operated pursuant to sections 4(b) and 1304(a) of Pub. L. 95–113.

(c) *Indian tribal household* means a household in which at least one household member is recognized as a tribal member by any Indian tribe, as defined in paragraph (d) of this section.

(d) *Indian tribe* means (1) any Indian tribe, Band, or other organized Indian group, for example, a Rancheria, Pueblo, or colony, and including any Alaska Native village or regional or village corporation (established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688)), and that is on a reservation and recognized as eligible for Federal programs and services provided to Indians because of their status as Indians; or (2) any Indian tribe or Band on a reservation holding a treaty with a State government.

(e) *Indian tribal organization (ITO)* means: (1) The recognized governing body of any Indian tribe on a reservation; or (2) the tribally recognized intertribal organization which the recognized governing bodies of two or more Indian tribes on a reservation authorize to operate the Food Stamp Program or a Food Distribution Program on their behalf.

(f) *Reservation* means the geographically defined area or areas over which an ITO exercises governmental jurisdiction so long as such area or areas are legally recognized by the Federal or a State government as being set aside for the use of Indians.

(g) *State* means any one of the fifty States, the District of Columbia, and the reservation of an Indian tribe whose ITO meets the requirements of